

“The general principle remains that a person is not guilty for omitting to do something.” Discuss.

The law will punish someone if they are under a duty to act but omit to do so. It must be decided, however, whether in law you are dealing with an act or an omission. There are three types of situations where this question comes up; continuing acts, supervening faults, and euthanasia.

In continuing acts the concept was used in the Fagan case (1969), where the defendant drove over the policeman's foot. At the time, the defendant did not have the mens rea for driving over the policeman's foot, which therefore, was an omission and not an act. He had the mens rea when he was on the foot and would not move. It was held that driving on the policeman's foot and staying there was a continuous act, followed by an omission, and during the continuous act the defendant had the mens rea, and was therefore liable. Another example of a continuing act is in Kaitamaki (1985), where the defendant was charged with rape because at the time of penetration, he thought that the woman was consenting, yet he did not withdraw when he had realized that she was not consenting.

A supervening fault is where a person who is aware that they have done something in order to endanger someone's life or property, and does nothing to stop any harm occurring; the original act is treated as the actus reus of the crime. It is when a defendant does not have the mens rea when the original act is committed but when they do not do anything to stop any harm being done that they have caused (to start an action and then just move on). For instance in R V Miller (1983), the defendant was the creator of a peril, where he fell asleep whilst smoking and woke up to see that the mattress was burning. He did not try to put the fire out and just went into the next room and went back to sleep. He was charged with arson, as he did not make any attempt to put out the fire.

Euthanasia is when a person assists another who is severely ill to die, by the ill person's request or by their own thinking of if they should live and be in pain or die and not be in pain. In NHS R V Bland (1993), Tony Bland, on the life support machine was severely injured. The decision in turning off the life support machine was seen as an omission rather than an act.

Some offences can be created by an omission, murder and manslaughter can be, but assault can't be, as in Fagan. An example of murder being an omission is in the case of R V Gibbons and Proctor (1918). A man and his wife were living with the man's daughter and they starved her. They were under a parental duty to give the child food, yet they omitted to do so.

Another omission is where a defendant is under a contractual duty, for example in R V Pittwood (1902). The gate keeper of a railway crossing opened the gate to let a car through but then forgot to close it and went away for his lunch. When a hay cart was crossing, a train came and killed the driver of the cart. Pittwood was charged with gross negligence manslaughter. It could be said that in the case of R V Singh (1999), that the defendant was under a contractual duty. The Defendant was the landlord of a house which he was renting out to tenants. The tenants died as a result of the gas

boiler being broken and carbon monoxide leaking out. It was the landlord's duty to maintain all of the electrical appliances in the house.

When somebody is assumed a duty of care, it is an omission, as in R V Stone and Dobinson (1977). The sister of Stone was living with him and his girlfriend and became anorexic and couldn't get out of bed. The couple started to look after her and tried to seek medical help, but couldn't. The girl then died as a result of starvation and because the couple started to look after her and then stopped they were charged with gross negligence manslaughter.

To sum up, the four omissions are being under a contractual duty (Pittwood), being assumed a duty of care (Stone and Dobinson), being the creator of a peril (Miller) and having a parental duty (Gibbons and Proctor). When somebody has a duty, they must do that duty, and if they omit to do so, then they will be guilty of an offence.